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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,271	11/30/2000	Cary Lee Bates	AUS920000291US1	5237

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Robert V. Wilder
Attorney at Law
4235 Kingsburg Drive
Round Rock, TX 78681

EXAMINER	
POND, ROBERT M	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/726,271	BATES ET AL.	
	Examiner	Art Unit	
	Robert M. Pond	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 December 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,10-20,22 and 24-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,10-20,22 and 24-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The Applicant amended Claims 1, 6, 12, 15, 18, 20, and 27, canceled Claims 8, 9, 21, and 23. All pending claims (1-7, 10-20, 22, and 24-28) were examined in this final Office Action.

Response to Arguments

Applicant's arguments filed 30 December 2003 have been fully considered but they are not persuasive.

The Applicant argued the instant invention is attempting to address the shortcomings of Del Sesto and Lett cited in the previous Office Action. Del Sesto teaches a) one problem with interactive television as it exists today is the lack of coordination of the offering, starting, and continuing of the execution of interactive applications with the broadcasting of television programs with which the applications are associated (please see col. 1, line 34-38), and b) offering and executing an interactive application without sufficient running time in the corresponding broadcast program may result in the continued execution of the interactive application after the broadcast program has ended. Del Sesto is aware of the problems of coordinating interactive applications with the feature segment (see col. 2, lines 11-14). This examiner maintains Del Sesto and Lett because the teachings are relevant and pertinent. The Applicant argues the

instant invention downloads a software product during a feature segment. Del Sesto teaches the interactive application being integrated into the programs to form a broadcast data feed (see Fig. 1 (110, 130, 180); col. 5, lines 38-45), and further teaches the "interactive applications are themselves as software products comprising executable code and data, which configures and controls the operation of a broadcast receiver 140" (see col. 4, lines 57-60).

From these teachings, this examiner concludes that Del Sesto a) attempts to provide an improvement over prior art system by coordinating interactive applications with intended programming, b) software products are integrated and broadcast along with programming, and c) interactive content is downloaded with the interactive application to enable timely execution of the broadcast with the interactive application.

The Applicant did not traverse the examiner's assertion of official notice or applicant's traverse was not adequate. The common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate (MPEP 2144.03).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. **Claims 1-4, 6, 7, 10-16, and 18-20, 22, 24-28 are rejected under 35 USC 103(a) as being unpatentable over Del Sesto et al. (Paper #3, patent number 6,530,084) in view of Lett (Paper #3, patent number 5,539,822).**

Del Sesto et al. teach a method and apparatus to facilitate control of interactive applications executing in defined time periods. Del Sesto et al. teach broadcasters as sources of television programs, commercials, and interactive applications, a broadcast server that maintains a database of various interactive applications, wherein the various interactive applications are associated with individual broadcasters, television programs, and commercials. Del Sesto et al. teach each interactive application containing at least one definition of a time period concerning the offering, start, or execution of an interactive application (see at least abstract; col. 1, line 8 through col. 3, line 22). Del Sesto et al. teach viewers ordering product (e.g. travel brochure), supporting pay-per-view services, and a time period where application execution starts and ends during a program broadcast (see at least col. 3, lines 65-67).

Del Sesto et al. teach all the above as noted under the 103(a) rejection and further teach a broadcast receiver detecting interactive applications, broadcast programs as segments, and pay-per-view services, but do not disclose specifics on purchasing selection. Lett teaches a system and method of providing interactive services in a subscription television system featuring a controller memory for storing subscriber terminal identification data, transaction identification data and transaction return data (please see at least abstract; col. 3, line 18 through col. 4, line 37). Lett discloses the use of television set top terminals with limited tuner and descrambling capabilities becoming a home communications terminal including user friendly processor controlled on screen displays for offering such services as advance video cassette recorder programming, sleep timing, parental control, pay-per-view, favorite channels and some limited messaging capabilities (see at least col. 2, lines 7-14). Lett further teach purchasing products via the interactive television service, delivery of products (e.g. video game download) and being billed by the system (see at least col. 5, lines 64-67). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. to include purchasing specifics as taught by Lett, in order to more fully disclose to potential customers how product is purchased and delivered via interactive television services, and thereby attract more customers to the service.

Del Sesto et al. teach all the above as noted under the 103(a) rejection but do not specifically disclose products being software products. Lett teaches all the

above as noted under the 103(a) rejection and further video game software as a type of product downloaded via an interactive service (see at least col. 20, lines 34-37). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. to include software products as taught by Lett, in order to facilitate software purchases via the interactive service, and thereby attract software providers and software consumers to the interactive service.

Del Sesto et al. teach all the above as noted under the 103(a) rejection but do not disclose storing the downloaded program in persistent storage. Lett teaches all the above as noted under the 103(a) rejection and further teach downloading a video program into the subscriber's terminal DRAM memory or non-volatile memory (NVM), and further teach optionally controlling the amount of time the video program remains in the subscriber's terminal memory. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. to include time controlled storage of software downloads as taught by Lett, in order to support pay-per-view product purchases.

Del Sesto et al. all the above as noted under the 103(a) rejection and teach solving time related problems associated with interactive applications associated with television broadcasts, commercials as broadcast segments, and further teach a predefined time period in which the interactive application begins and ends during a program broadcast period, but do not specifically disclose software

product download during a program broadcast. Lett teaches all the above as noted under the 103(a) rejection and further teach video game program download as an interactive service. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. to include downloading a software program product as taught by Lett during the time period allotted during a program broadcast as taught by Del Sesto, in order to relax time constraints during an interactive application, and thereby increase sales opportunities of the interactive service by exposing the viewer to the product as soon as the interactive application is executed.

2. **Claims 5 and 17 are rejected under 35 USC 103(a) as being unpatentable over Del Sesto et al. (Paper #3, patent number 6,530,084) and Lett (Paper #3, patent number 5,539,822), as applied to Claims 4 and 16 further in view of Official Notice (regarding old and well-known business practices of broadcasters and cable network providers).**

Del Sesto et al. and Lett teach all the above as noted under the 103(a) rejection and teach broadcasters or cable networks providing pay-per-view services offered by pay-per-view providers, charging and billing the viewer for selected services, but do not disclose charging the viewer for delivering the service. This examiner takes the position that it is old and well-known that broadcasters and cable network operators charge for delivering access to

viewers and charge for additional services beyond basic subscriber services. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. and Lett, to include charges for service delivery as taught by Official Notice, in order to fully maximize revenue from the interactive application service.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mr. Robert M. Pond** whose telephone number is 703-605-4253. The examiner can normally be reached Monday-Friday, 8:30AM-5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Mr. Vincent Millin** can be reached on 703-308-1065.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

703-872-9306 (Official communications; including After Final communications labeled "Box AF")

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

Robert M. Pond
Patent Examiner
May 3, 2004

Jeffrey A. Smith
Primary Examiner